

1 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **ALVIN & KENNETH DANIELSON,**)

4 **Appellant,**)

5 **v.**)

6 **STATE OF WASHINGTON,**)
7 **DEPARTMENT OF ECOLOGY,**)

8 **Respondent.**)

PCHB NO. 93-318

**ORDER ON MOTION FOR
SUMMARY JUDGMENT**

9 This case came before the Board on an appeal by Alvin and Kenneth Danielson of two
10 Reports of Examination dated December 16, 1993, and December 26, 1993. On February 10,
11 1994, Ecology moved for summary judgment. Danielsons responded on March 7, 1994.

12 Having considered the motion, response, and supporting documents submitted by the
13 parties, the Board makes these

14 **FINDINGS OF FACT**

15 **I.**

16 Water Right Certificate No. 3192A was issued in 1958 to permit irrigation of 40 acres.
17 On July 11, 1991, Danielson Farms applied for an application to increase the irrigated acreage
18 under the permit. On December 26, 1993, Ecology issued a Report of Examination
19 recommending denial.

20 **II.**

21 Water Rights Certificate No. 3530 was issued in 1960 to permit irrigation of 47 acres.
22 On July 11, 1991, Danielsons applied for an application to increase the irrigated acreage under
23 the permit. On December 16, 1993, Ecology issued a Report of Examination recommending
24 denial.

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27 **ORDER ON MOTION FOR
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III.

In their response to Ecology's motion, Danielsons alleged a number of errors of fact in the Reports of Examination. We find, however, that none of the alleged errors constitutes a material issue of fact on the issue on which Ecology moved for summary judgment, the requested increase in the acreage to be irrigated.

IV.

Any conclusion of law deemed to be a finding of fact is adopted as such.

Based on the above findings, the Board makes these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction under RCW 43.21B.

II.

An application for a change of place of use of a ground water certificate is governed by RCW 90.44.100, which states in relevant part:

(3) the construction of an additional well or wells shall not enlarge the right conveyed in the original permit or certificate.

This language has been interpreted by the State Supreme Court to forbid a change to a permit which would increase the acreage of the original permit. Schuh v. Department of Ecology, 100 Wn 2d 180, 667 P.2d 64 (1983). The Board has applied the same rule to different facts. Jellison v. Doe, PCHB 88-124 (1988).

We conclude that Ecology correctly recommended denial of the two Danielson applications.

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2 III.

3 Any finding of fact deemed to be a conclusion of law is adopted as such.

4 IV.

5 No material issue of fact having been shown to exist, and the Board having found that
6 Ecology is entitled to summary judgment as a matter of law, the Board enters the following

7 ORDER

8 The Reports of Examination issued by Ecology, recommending denial of the
9 applications from the Danielsons to add acreage for irrigation under Ground Water Permits
10 No. 3192A and No. 3530, are affirmed.

11 DONE this 2nd day of May, 1994, in Lacey, Washington.

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13 POLLUTION CONTROL HEARINGS BOARD

14 
15 RICHARD C. KELLEY, Presiding

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17 ROBERT V. JENSEN, Chairman

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19 JAMES A. TUPPER, JR., Member

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22 P93-3180